

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CONFIRMIT, INC.,

Plaintiff,

Case No. 1:21-cv-4319

-against-

COMPLAINT

AND AGENCY, LLC,

Defendant.

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Plaintiff Confirmit, Inc. (“**Confirmit**”), by and through its attorneys, Weiss Zarett Brofman Sonnenklar & Levy, P.C., as and for its complaint against defendant AND Agency, LLC (“**AND Agency**”), alleges as follows:

PARTIES

1. Plaintiff Confirmit is a corporation organized under the laws of the State of Delaware, which maintains its principal place of business in the State of New York, New York County.

2. Upon information and belief, defendant AND Agency is a limited liability company organized under the laws of the State of Illinois, which maintains its principal place of business in Canada within the City of Toronto, Province of Ontario.

JURISDICTION AND VENUE

3. Defendant AND Agency consented to personal jurisdiction in the State of New York under Section 20.2 of the Horizons Software as a Service Agreement effective as of December 21, 2017 (“**Agreement**”).

4. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 because: (a) there is diversity of citizenship between Confirmit, which is a Delaware corporation that maintains a principal place of business in New York, and the members of AND Agency, who, upon information and belief, are not citizens of the States of Delaware or New York; and (b) the amount in controversy exceeds the sum of \$75,000.

5. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391(b)(3) because AND Agency is subject to this Court's personal jurisdiction.

STATEMENT OF FACTS

6. Confirmit provides, among other things, multitenant web-based data collection and reporting services and certain other services and products related thereto ("SaaS Services").

7. On or about December 21, 2017, Confirmit and Greenwich Associates ULC, a Canadian unlimited liability company ("Greenwich"), entered into the Agreement.

8. On or around December 21, 2017, Confirmit and Greenwich entered into an Order Form to Confirmit for certain SaaS Services ("Order Form"), which Order Form is expressly incorporated into the Agreement.

9. Under the Agreement, Greenwich agreed to purchase, for the duration of the Agreement and on the terms set forth therein, license to access and use certain Confirmit's SaaS Services, listed more specifically in the Order Form, at the prices and quantities specified in such Order Form.

10. The term of the Agreement is from December 21, 2017 to December 20, 2020.

11. Under the Order Form, Greenwich agreed remit quarterly payments for the SaaS Services.

12. Under Section 3.2 of Schedule 2 to the Agreement, Greenwich agreed to remit payment to Confirmit within thirty (30) days of receiving an Uncontested Invoice (a term defined in the Agreement).

13. Under Section 3.3 of Schedule 2 to the Agreement, in the event of nonpayment, Greenwich agreed to be liable to Confirmit for late charges on the unpaid balance due at the rate of ten percent (10%) per annum from the date payment was due.

14. Pursuant to an agreement entitled “Assignment of Rights and Assumption of Obligations” effective January 29, 2018 (“**Assignment**”), Greenwich assigned the Agreement to AND Agency, AND Agency assumed all of Greenwich’s obligations under the Agreement, and Confirmit consented to said assignment and assumption.

15. On or about December 27, 2019, Confirmit sent AND Agency invoice number 317151 for sum of \$76,592.00 (“**Invoice 317151**”), a sum due quarterly under the Agreement.

16. AND Agency failed to remit payment of \$76,592.00 within thirty days of its receipt of Invoice 317151.

17. On or about October 22, 2020, Confirmit sent AND Agency invoice number 317152 for sum of \$76,592.00 (“**Invoice 317152**”), a sum due quarterly under the Agreement.

18. AND Agency failed to remit payment of \$76,592.00 within thirty days of its receipt of Invoice 317152.

19. AND Agency breached the Agreement when it failed to remit payments to Confirmit due under the Agreement.

AS AND FOR PLAINTIFF’S FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)

20. Confirmit repeats and realleges the allegations set forth in Paragraphs 1 to 19 of the Complaint as if fully set forth herein.

21. The Agreement and the Assignment are binding contracts between Confirmit and AND Agency.

22. Confirmit performed under the Agreement.

23. AND Agency breached the Agreement when it failed to remit payments to Confirmit due under the Agreement.

24. Confirmit was damaged by AND Agency's breach of the Agreement in a sum not less than \$153,184.00.

25. Based upon the foregoing, Confirmit is entitled to be awarded a money judgment in its favor against AND Agency, in a sum to be determined at trial not less than \$153,184.00, plus costs, disbursements, reasonable attorneys' fees, and late charges at the rate of 10% per annum from January 26, 2020.

WHEREFORE, plaintiff Confirmit, Inc. prays that the Court enter judgment in its favor on its first cause of action and award it a money judgment against defendant AND Agency, LLC in a sum to be determined at trial not less than \$153,184.00 plus costs, disbursements, reasonable attorneys' fees, and late charges at the rate of 10% per annum from January 26, 2020.

Dated: May 12, 2021
New Hyde Park, NY 11042

WEISS ZARETT BROFMAN SONNENKLAR & LEVY, P.C.
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